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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/128,340 08/03/98 LLORIN

0 P-4278

EXAMINER

HM12/0330

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ART UNIT

PAPER NUMBER

1651

DATE MAILED:

03/30/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/128,340

Applicant(s)  
Llorin et al.

Examiner  
Ware

Group Art Unit  
1651



☒ Responsive to communication(s) filed on Jan 11, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1 and 3-13 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1 and 3-13 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 5

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 1651

Claims 1 and 3-13 are presented for reconsideration on the merits.

The amendment filed January 11, 1999, has been received and entered.

The IDS filed January 11, 1999, has been received and the reference has been considered.

A copy of the Form is enclosed.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1 and 3-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over newly cited Buck et al., see the enclosed PTO-1449 Form.

The claims are discussed in the previous Office action of October 1, 1998.

Buck et al. teach sonification of Mycobacterium. Each of the process steps of a first liquid, placing a liquid in a vessel having an alkaline pH and subjecting the cells to sonification are taught, or at least suggested, in the newly cited reference.

The claimed subject matter differs from the disclosure of Buck et al. in that ultrasonic energy is not disclosed.

It would have been obvious to one of ordinary skill in the art at the time of applicants' invention to employ either ultrasonification and/or sonification to disrupt the cells as taught by Buck et al. Clearly there is no unexpected successful result obtained by the process steps of applicant's claimed process. Thus, the claims are deemed prima facie obvious over the newly cited reference.

Art Unit: 1651

All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

The remaining references listed on the enclosed PTO-892 and/or PTO-1449 are cited to further show the state of the art.

No claims are allowed.

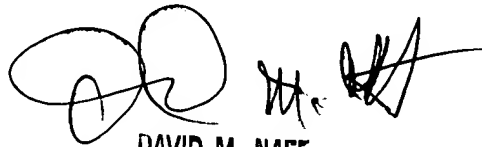
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is (703) 308-4245. The examiner can normally be reached on Mondays to Fridays from 9:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn, can be reached on (703) 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7939.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Deborah K. Ware

March 29, 1999

  
DAVID M. NAFF  
PRIMARY EXAMINER  
ART UNIT 1651